

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10774 of 1995

with

SPECIAL CIVIL APPLICATION No 9691 of 1995

and

SPECIAL CIVIL APPLICATIONS NO. 8168, 9662/95

SPECIAL CIVIL APPLICATION NO. 499, 500, 501/96

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

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2. To be referred to the Reporter or not? yes
3. Whether Their Lordships wish to see the fair copy
of the judgement? No
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?
Yes
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STATE OF RAJASTHAN

Versus

RAJENDRAKUMAR JOSHI

Appearance:

1. Special Civil Application No. 10774 and
8168, 9662, 9691/95, 499, 500 and 501/96

Mr R M Chhaya for Mr N D Nanavati, Advocate for
petitioners

Ms Harsha Devani, AGP for the respondents

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 06/05/96

ORAL JUDGMENT

In this group of Special Civil Application filed by the State of Rajasthan through Secretary, Transport Department, Sachivalaya, Jaipur, the grievance voiced is that inspite of the fact that there is no cause of action against the State of Rajasthan, suits are filed in some selected courts in the State of Gujarat and blanket injunctions are obtained restraining the defendants State of Gujarat, State of Rajasthan and their officers from seizing or detaining the plaintiff's vehicles and recovering compensation amount under the Motor Vehicles Act, 1988.

2. Inspite of notice being served on the plaintiff-respondents, none has appeared. These matters were adjourned from time to time with the hope that the plaintiffs who have obtained ex=parte stay orders and enjoying the benefit of that will put in their appearance.

3. For the sake of convenience, I have taken the facts from Special Civil Application No.10774/95. Mr R M Chhaya, learned Advocate appearing for the petitioners has read before me a copy of the plaint filed by the plaintiff-Rajendrakumar Joshi, proprietor of Shrinath Tourist Agency in Special Civil Suit No.263/95 filed on 25.4.1995 in the Court of Civil Judge (S.D.) at Baroda (Rural). According to the suit, the plaintiff is doing business of tourist bus operators, tour organisers and contractors and is maintaining a fleet of tourist buses. The necessary details of which have been furnished separately at Schedule 'A' appended to the plaint. The buses operated are duly registered under the provisions of Motor Vehicles Act, 1988 and the rules framed thereunder by the Central Government as well as by the concerned State Governments. The buses have also been granted All India Permits, special permits, or tourist permits as the case may be for which they are required to pay regularly the necessary road taxes and other levies collected by various State Governments in whose territories the plaintiff's tourist buses ply. Inspite of this, the defendant authorities in the guise of exercise of power and authority under section 207 of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988'), seized and detained the plaintiff's vehicle mainly on the basis of allegation that the passengers carried in the

plaintiff's vehicle have paid individual fares for their travel and as such they are plying the vehicle as State carriages without permits. The plaintiffs have expressed that on account of seizure of their vehicles, great difficulties and inconvenience is caused not only to them but also to the travelling public. Various contentions have been raised with respect to the provisions under section 207 of the Act. In para 11 of the petition, it is stated that the cause of action of the suit has arisen within the local limits of the Court when the defendant authorities in utter breach and violation of the provisions of section 207 of the Act unauthorisedly and illegally started seizing and detaining the plaintiff's tourist vehicles mainly on the allegation that the plaintiff or its agents had collected individual fares from the passengers and thereby committed breach of condition of the permit. On these facts, the plaintiff has sought relief seeking declaration against the defendant No.1 - Secretary, Transport and Fisheries Department, Gandhinagar, defendant No.2 - Secretary, Home Department, Gandhinagar and defendant No.3, Secretary, Transport Department, Sachivalaya, Jaipur. In the schedule appended to the suit, a list of 18 vehicles has been given. Along with the suit, an application under Order 39 Rule 1 and 2 of the Code of Civil Procedures has been filed seeking interim relief as follows:

"To issue ad-interim injunction against the defendant authority, their servants and agents restraining them from seizing or detaining the plaintiffs' vehicle mentioned at Annexure 'A' to the plaint and recovering any composition amount in respect of them under the Motor Vehicles Act."

4. The suit was filed in the Court of Civil Judge (SD), Baroda. On the same day, the learned Judge, Shri R G Bhatt has granted ex-parte ad-interim injunction in terms of para 3-A against the defendants till further orders. The learned Judge noticed the contention of the learned Counsel for the plaintiffs that inspite of the ruling of the Hon'ble High Court of Gujarat, the concerned authorities are seizing the vehicles and if the interim injunction is not granted, the purpose of the suit will be frustrated. The learned Judge in his order stated thus :

"considering the facts of the case, and the fact that if the buses are withheld by the authorities

unauthorisedly what will be the position of the passengers who are travelling in that bus and, therefore, at present I find that the plaintiff has a *prima facie* case for which I can use my discretion and hence, in these circumstances and keeping in mind various provisions of the M.V. Act, amendments etc. and also keeping in the mind the judgment of our Hon'ble High Court of Gujarat in LPA No.324 of 1994, I pass the following order:

An ad-interim injunction is granted as prayed for in terms of relief clause 3-A of this application Exh.5 against the defts. till further order.

An urgent notice be issued against the defts. on paying of urgent P.F. reutrnable on 3.5.95 and urgent hearing."

Having read the order passed by Shri R G Bhatt, learned Civil Judge (SD), Baroda, I am satisfied that the order is patently illegal and falls under the category of an order which amounts to abuse of powers of the Court. Though the learned Judge has noted the contention of the learned Counsel for the plaintiffs, with respect to the authority of his Court, he did not even bother to read and to refer the citation in his order. If he had bothered to read the judgment of this Court in the case of RAMKRISHNA BUS TRANSPORT SERVICES v. STATE OF GUJARAT, reported in 1994 (2) GLR 1371, he would have found answers to all the contentions raised in the suit. The injunction has been apparently granted contrary to the binding ruling of this Court. The learned Judge has also not bothered to follow the principle of law laid down in the matter of grant of injunction by the Division Bench of this Court in the case of ANUPAN REKADI CABIN ASSOCIATION v. JAMNAGAR MUNICIPAL CORPORATION, reported in 1995 (1) GLH 586. This Court while dealing with the provisions of Order 39 Rule 1,2 and 3 of the CPC held that;

"an ex-parte injunction could be granted only under exceptional circumstances. Before granting ex-parte injunction, the Court must record reasons. It is further held that it is not a mere formality, the Court should not unwittingly become a part of a design of taking unfair advantage by securing ad-interim orders."

Shri B N Kirpal, C.J. as he then was, re-emphasised certain aspects with regard to grant of injunction, thus:

"passing interim orders indiscriminately and without apparent due application, which has the effect of allowing the plaintiff to continue to enjoy the fruits of his actions which may be contrary to law, tends to lower the court's prestige and clearly undermines the Rule of Law."

The learned Chief Justice has quoted the law laid down by the Apex Court in the case of MORGAN STANLEY MUTUAL FUND v. KARTICK DAS. In the present case, no reason of whatsoever nature has been given which compelled the learned Judge to grant ex-parte injunction. The learned Judge may be reminded of the observations of R K Abichandani, J. in the same judgment, which reads as follows:

"Any deliberate attempt to flout the ratio laid down, in the binding decisions ought to be viewed seriously and may even merit disciplinary action against the erring official."

5. The learned Judge has referred to the order of the Division Bench of this Court passed in LPA No.324/94. He has described the interim order of this Court as judgment. The Division Bench has not granted interim relief in as much broad terms as the learned Judge has granted. The Division Bench granted interim relief as follows:

""We have heard the Counsel for the parties at length. Rather than issuing any interim injunction, we direct that the appeal be listed for hearing on 26th Sept. 1994.

The respondent shall however instruct the police officers and officers of the department that while taking action under section 207 of the Motor Vehicles Act, they will keep the provision of the proviso to sub section (i) in mind, especially when a large number of women and children are there in the bus."

Thus it is apparent that the learned Judge has granted interim relief much beyond the directions given by this Court.

6. Mr R G Bhatt, the learned Judge even did not bother to read the plaint and to see whether there was any cause of action against the defendant - State of Rajasthan. In para 11 of the judgment, it is simply stated that the cause of action for the suit has arisen within the local limits of the Hon'ble Court. No details have been given with respect to the alleged act of seizure and detention of the vehicles in disregard to the provisions of section 207 of the Act. The suit has been filed with respect to 18 vehicles. Nothing has been mentioned as to when, where and who seized the vehicles. There is only a vague statement in air. This amply reflects on the motives of the plaintiffs. If the action was taken within the territorial jurisdiction of the State of Rajasthan, the suit could not have been entertained by the learned Civil Judge at Baroda. The plaintiffs have not sought any relief against the State of Gujarat. The learned Judge has completely overlooked the provisions of section 21 of the CPC. The learned Judge has granted injunction in a most casual manner in a cleverly drafted plaint. The learned Judge did not even fix any responsibility on the plaintiff for the service of notice on the defendants. The approach adopted by the learned Civil Judge Shri R G Bhatt is ex-facie illegal, which amounts to abuse of the powers of the Court. It is surprising that the plaintiffs have selected only few Courts in the state of Gujarat, for obtaining the interim relief. Irrespective of bar of territorial jurisdiction, people from far distances are approaching the selected Courts. This is a matter for enquiry by appropriate authorities.

7. In view of the aforesaid, this group of Special Civil Applications is allowed and the impugned order granting ad-interim injunction in the respective Special Civil Applications is quashed and set aside. The suit filed in the respective Courts shall stand rejected.

Rule made absolute. No order as to costs.

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